

Law Professional Corporations - Rights to Invoice

Author : admin

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Law Professional Corporations - Rights to Invoice

Aitchison Professional Corporation v. The Queen, [2016 TCC 281](#)

This was a Rule 58 application (that was not granted). The application of Rule 58 to the facts are not novel. What is interesting about this case is the effect the outcome could have on professional corporations whose shareholders are related.

NOTE: The author hopes that this matter will not settle and will proceed to trial. The ambiguity resulting from not having this matter settled would introduce significant risk for professional corporations.

The CRA issued re-assessments under *Income Tax Act*, s 160, claiming that the property transferred was the "right to invoice" for legal services.

In this case, the shareholders of the professional corporation were related and all were licensed to practice law in Ontario. During the period in question one shareholder had significant personal tax debt. During the period, none of the shareholders were paid a salary, and no dividends were paid to the tax-debtor-shareholder despite significant billings of the corporation connected with legal services provided by that shareholder.

Two legal questions, framed by the taxpayer were:

- is there an innate right to invoice of any lawyer who renders services through a professional corporation; and if so
- can such a right be transferred.

The Court held that the issue raised is novel and complex, and must be determined with the benefit of a full trial so as to serve the interest of justice and the possibility of establishing precedent (paras 20 and 22).

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